

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SWEET STREET DESSERTS, INC. v. CHUDLEIGH'S LTD.	CIVIL ACTION NO. 12-3363
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ORDER

AND NOW, this 19 th day of December 2014, for the reasons stated in the foregoing memorandum, upon consideration of Sweet Street Desserts, Inc.'s Motion for Summary Judgment on Counts I Through VII of Sweet Street Desserts, Inc.'s Complaint and on Counts I Through III of Chudleigh, Ltd.'s Amended Answer and Counterclaims (ECF No. 67); Defendant Chudleigh's Ltd.'s Motion for Summary Judgment on All of Sweet Street's Claims Except the Declaration of Noninfringement in Count I (ECF No. 65); and all responses, replies, memoranda, and submissions thereto, it is hereby ORDERED that:

1. Sweet Street's Motion for Summary Judgment of Non-Infringement, Count I of Sweet Street's Complaint, is GRANTED.
2. The parties shall prepare briefs of no longer than 15 pages detailing the relief the Court should order based on the Court's finding that the Blossom Design is functional, specifically legal argument on the question of whether the Court is empowered to declare that U.S. Trademark Registration No. 2,262,208 is invalid and/or to cancel U.S. Trademark Registration No. 2,262,208 as functional. The parties shall file the briefs by Monday, January 12, 2015. The Court will refrain from ruling on Counts II (declaratory judgment of invalidity of Chudleigh's trademark registration) and III (cancellation of Chudleigh's trademark registration

as generic) of Sweet Street's Complaint until after the Court has had the opportunity to review the parties' submissions.

3. Counts IV (obtained by fraud) and V (abandonment) of Sweet Street's Complaint are dismissed with prejudice because Sweet Street has abandoned those claims.
4. Chudleigh's Motion for Summary Judgment on Count V (tortious interference as to Applebee's) of Sweet Street's Complaint is GRANTED, and that claim is dismissed with prejudice.
5. Chudleigh's Motion for Summary Judgment on Count VI (tortious interference as to Form & Frys) of Sweet Street's Complaint is GRANTED, and that claim is dismissed with prejudice.
6. Sweet Street's Motion for Summary Judgment on Counts I (trademark infringement), II (false designation of origin), and III (state law unfair competition) of Chudleigh's Counterclaims is dismissed as moot.

BY THE COURT:

/s/ Michael M. Baylson

Michael M. Baylson, U.S.D.J.